

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William MacLure	Team: Squad #16	CCRB Case #: 201702505	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/16/2017 3:18 PM	Location of Incident: § 87(2)(b) and § 87(2)(b)	Precinct: 70	18 Mo. SOL 9/16/2018	EO SOL 9/16/2018	
Date/Time CV Reported Sat, 04/01/2017 8:32 AM	CV Reported At: CCRB	How CV Reported: Social Media	Date/Time Received at CCRB Sat, 04/01/2017 8:32 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Peter Borisenko	20164	950091	070 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Salvatore Annunziata	15854	961491	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Peter Borisenko	Force: Police Officer Peter Borisenko used physical force against § 87(2)(b)	
B.POM Peter Borisenko	Discourtesy: Police Officer Peter Borisenko spoke discourteously to an individual.	
C.POM Peter Borisenko	Abuse: Police Officer Peter Borisenko threatened § 87(2)(b) and individuals with the use of force.	

Case Summary

On April 1, 2017, § 87(2)(b) filed this complaint with the CCRB via Twitter, on behalf of § 87(2)(b) and § 87(2)(b) and other individuals. Also on April 1, 2017, Deputy Inspector James Palumbo of the 70th Precinct reported this incident to IAB under original log number 17-11815, which was received at the CCRB on April 10, 2017. Due to press coverage of this incident, this was marked as a sensitive case.

On March 16, 2017, at approximately 3:18 p.m., at the intersection of § 87(2)(b) and § 87(2)(b) in Brooklyn, students from § 87(2)(b) were throwing snowballs at one another. PO Peter Borisenko and PO Salvatore Annunziata approached § 87(2)(b) and the other individuals. PO Borisenko told them to stop throwing snowballs and leave the location. The students stopped throwing snowballs and started to leave the corner. As the students and officers were walking down § 87(2)(b) PO Borisenko pushed § 87(2)(b) (**Allegation A**). An unidentified student picked up a snowball. PO Borisenko took out his taser and held it at his left side. The unidentified student dropped the snowball. PO Borisenko told the unidentified student, "Pick that shit up again. Pick that shit up again" (**Allegation B**). PO Borisenko asked § 87(2)(b) and the other students, "Do you want to ride the lightning?" (**Allegation C**). The students left the location. No arrests were made and no summonses were issued.

§ 87(2)(b) provided video footage of this incident that he took on his cell phone. The SnagIt clips for **Allegations A through C** are linked below. The full video and SnagIt clips can be found under Board Reviews 01 through 04, respectively. The transcription of the full video can be found under Board Review 05. The video can also be found on § 87(2)(b) where it had over 46,000 views, as of August 2, 2017.



Allegation A.mp4



Allegation B.mp4



Allegation C.mp4

This case exceeded the 90 day benchmark. The students were not identified until the Occurrence Report was received from the Department of Education on April 27, 2017 (Board Review 20). § 87(2)(g). Additionally, § 87(2)(b) did not appear at the CCRB until June 17, 2017, 77 days after the case was filed at the CCRB. The age of this case was 124 days as of August 3, 2017.

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation.
- A FOIL request sent to the NYC Comptroller's office on July 14, 2017, revealed that no one had filed a Notice of Claim in regards to this incident (Board Review 06).
- § 87(2)(b)

Civilian and Officer CCRB Histories

- This was § 87(2)(b)'s first complaint filed with the CCRB (Board Review 07).
- This was § 87(2)(b)'s first case with the CCRB (Board Review 08).
- This was § 87(2)(b)'s first case with the CCRB (Board Review 09).
- This was § 87(2)(b)'s first case with the CCRB (Board Review 10).

- This was § 87(2)(b) first case with the CCRB (Board Review 11).
- PO Borisenko had one previous allegation stemming from one case over his six year tenure with the NYPD.
 - In CCRB case number 201510903, a refusal to provide name or shield number allegation was unfounded.

Potential Issues

- § 87(2)(b) was the only victim to provide a statement to the CCRB. § 87(2)(b) refused to participate after providing a phone statement.
- The guardians of § 87(2)(b) and § 87(2)(b) did not respond to extensive contact attempts, including hand-delivered letters to their homes.
- The individual who PO Borisenko spoke discourteously to (**Allegation B**) was unable to be identified. § 87(2)(b) was unable to identify him and there was no documentation regarding his identity.

Findings and Recommendations

Allegation A – Force: Police Officer Peter Borisenko used physical force against § 87(2)(b)

At 01:00 minutes in the original video posted to § 87(2)(b) by § 87(2)(b) (Board Reviews 01, 02, 05), PO Borisenko stops to speak with a § 87(2)(b) who is wearing a peach hood, and another student with a maroon jacket and a backpack with a cartoon crab on it. PO Borisenko tells the students, "Get off the block." At 01:02, the officers, § 87(2)(b) and the other student begin walking east on § 87(2)(b) again. At 01:05, PO Borisenko says, "Let's go," and then passes his baton from his left hand to his right hand. At approximately 01:10 the video, PO Borisenko takes a few steps forward and pushes § 87(2)(b). PO Borisenko's left hand makes contact with § 87(2)(b)'s backpack. § 87(2)(b) is walking away from PO Borisenko at the time that PO Borisenko pushes him. § 87(2)(b) turns to PO Borisenko and states, "Stop touching me." PO Borisenko responds, "Get off the block." PO Borisenko says to § 87(2)(b) "What are you gonna do about it?" at least six times. It is clear in the video that PO Borisenko is taller and larger than § 87(2)(b).

§ 87(2)(b) provided a brief phone statement to the CCRB on May 3, 2017 (Board Review 12). § 87(2)(b) was § 87(2)(b) old at the time of this incident. § 87(2)(b) stated that he and his friends, § 87(2)(b) and a couple of other people from § 87(2)(b) were having a snowball fight after school. PO Borisenko and PO Annunziata got out of their police vehicle and approached the students. PO Borisenko told the students to get off the block. The students first asked the officers why they had to leave, but then started to leave the block. § 87(2)(b) and the other students started to walk away. While they were walking away from the corner of § 87(2)(b) and § 87(2)(b) PO Borisenko pushed § 87(2)(b).

§ 87(2)(b) was interviewed at the CCRB on June 17, 2017 (Board Review 13). § 87(2)(b) indicated that he had reviewed the video recording of the incident prior to providing his statement. § 87(2)(b) stated that that he and his friends § 87(2)(b), § 87(2)(b) and other students from § 87(2)(b) were playing with snow after school. The investigation determined that "§ 87(2)(b)" was a nickname for § 87(2)(b) and his friends were

playing with snow for approximately 20 minutes before PO Borisenko and PO Annunziata arrived at the location. PO Borisenko and PO Annunziata arrived at the location, parked their police vehicle, and approached the students. PO Borisenko told § 87(2)(b) and his friends to stop throwing snow. The students complied and the officers left the location. Shortly after the officers left, § 87(2)(b) and his friends recommenced throwing snow at one another. Approximately five minutes later, PO Borisenko and PO Annunziata returned to the location with their batons in their hands which they held at their sides. PO Borisenko told § 87(2)(b) and his friends to stop throwing snow again. Someone threw snow again, but § 87(2)(b) was not sure who. PO Borisenko told § 87(2)(b) and his friends to get off the block. § 87(2)(b) and his friends started walking away, east on § 87(2)(b). § 87(2)(b) stated that this was the direction the officers were “pushing” them towards. § 87(2)(b) clarified that the officers were not physically making contact with anyone. § 87(2)(b) estimated that he and his friends were approximately 10 feet in front of the officers. § 87(2)(b) stated that § 87(2)(b) was arguing with the officers because he did not want to leave the location. § 87(2)(b) did not remember what § 87(2)(b) and the officers were saying. § 87(2)(b) and his friends were trying to get § 87(2)(b) away from the situation. § 87(2)(b) was trying to get § 87(2)(b) to leave and kept telling him, “Let’s go.” § 87(2)(b) stated that an unidentified woman was yelling at officers saying that his friend was throwing ice at her car. § 87(2)(b) said that he and his friends were not near her car and he did not know how snow could have hit her car.

§ 87(2)(b) was interviewed at the CCRB on April 4, 2017 (Board Review 14). § 87(2)(b) exited the building he works in at § 87(2)(b) onto the west side of § 87(2)(b) near § 87(2)(b). § 87(2)(b) noticed PO Borisenko and PO Annunziata approaching a group of students. § 87(2)(b) stated that his attention was drawn to the officers and students because PO Borisenko had his baton in his right hand. § 87(2)(b) started recording the incident on his cell phone and crossed the street. § 87(2)(b) crossed § 87(2)(b) and followed the officers and students east on § 87(2)(b). Right after § 87(2)(b) got close to the officers, PO Borisenko pushed § 87(2)(b) from behind with his left hand. § 87(2)(b) was walking east on § 87(2)(b) away from the officers, when PO Borisenko pushed him. § 87(2)(b) turned to PO Borisenko and stated, “Keep your hands off me,” or something to that effect. PO Borisenko, who still had his baton in his right hand, said, “What are you gonna do about it?” two or three times.

PO Borisenko was interviewed at the CCRB on June 20, 2017 (Board Review 15). PO Borisenko was § 87(2)(b) old at the time of this incident. PO Borisenko stands § 87(2)(b). PO Borisenko confirmed that he had viewed the video recording of the incident on the internet prior to providing his CCRB statement. PO Borisenko stated that he and PO Annunziata were driving down § 87(2)(b) at approximately 3:20 p.m., when PO Borisenko noticed a large group of teenagers on the corner of § 87(2)(b) and § 87(2)(b) [across the street from § 87(2)(b) and next to § 87(2)(b)]. PO Borisenko thought it was not normal for a large group of teenagers to be there at that time. PO Borisenko told PO Annunziata park the car to make sure nothing “nefarious” was going on. PO Borisenko stated that the students were not throwing ice the first time he observed them. PO Annunziata and PO Borisenko parked across the street from the students. PO Borisenko observed the group of approximately 15 to 20 students start to throw ice at each other and at passing cars. PO Borisenko did not see ice hit any passing cars and did not see any students throw ice at any third parties. No one complained to the officers of physical injury or property damage. PO Borisenko stated that he

did not believe that it was snow that was being thrown because the snow had fallen two days prior and that the snow had turned into ice. After observing the students for approximately one or two minutes, PO Borisenko and PO Annunziata exited their police vehicle and approached the students. PO Borisenko approached holding his baton at his side. PO Borisenko stated that he had his baton drawn because there were 15 students and only two officers and the students were throwing big chunks of ice. PO Borisenko told the students to stop throwing ice and added that if they continued to throw ice, he would clear the corner. PO Borisenko and PO Annunziata got back into their vehicle to leave the location. However, less than a minute after the officers returned to their police vehicle, PO Borisenko observed the students begin to throw ice again. PO Borisenko did not see any ice hit any passing vehicles. PO Borisenko and PO Annunziata got out of the car and approached the students again to clear the corner. PO Borisenko was still holding his baton at his side when he approached the students the second time. PO Borisenko asked the students to get off the corner. PO Borisenko stated that he was asking the students to disperse because they were acting disorderly, creating a hazard, and he was concerned that it might lead to a serious injury or a car accident. When asked how the students were being disorderly, PO Borisenko stated that the students were throwing chunks of ice at one another and passing vehicles, and that they were blocking pedestrian traffic. When asked if the students complied with the order to disperse, PO Borisenko stated that the students slowly started moving. PO Borisenko emphasized that the students were moving very slowly. PO Borisenko denied that the students were doing anything else disorderly. PO Borisenko and PO Annunziata followed the students east on § 87(2)(b). When asked if he made physical contact with any of the students, PO Borisenko stated that he believed he only made physical contact with one of the students while he was guiding them down the block. PO Borisenko stated that he guided the student, who the investigation determined to be § 87(2)(b) by touching his backpack with an open palm extended in front of him. PO Borisenko confirmed that he used force to move § 87(2)(b) forward when he did this, but described this action by stating that he “guided” rather than “pushed” § 87(2)(b). When asked if he pushed § 87(2)(b) forward, PO Borisenko reiterated that he “guided” him forward. When asked if § 87(2)(b) was refusing to move at any point, PO Borisenko stated that he was moving very slowly. PO Borisenko stated that the other students were walking with purpose, approximately five to ten feet ahead, but § 87(2)(b) was “basically dragging his feet.” PO Borisenko did not remember how many times he instructed § 87(2)(b) to get off the block before “guiding” him forward. § 87(2)(b) asked PO Borisenko why he was touching him. PO Borisenko responded, “Off the block.” § 87(2)(b) told PO Borisenko, “Don’t touch me.” PO Borisenko responded, “What are you gonna do about it?” PO Borisenko did not make any additional contact with § 87(2)(b). When asked if he used any de-escalation tactics, PO Borisenko stated that he did when he asked the students to stop throwing ice and get off the block. PO Borisenko denied using any additional de-escalation tactics during the encounter.

PO Annunziata was interviewed at the CCRB on June 21, 2017 (Board Review 16). He also confirmed that he had viewed the video recording of the incident on the internet prior to providing his CCRB statement. § 87(2)(g)

PO Annunziata stated that the students were not committing any crime either time he and PO Borisenko approached. PO Annunziata stated PO Borisenko pushed one student, who the investigation determined to be § 87(2)(b) one time while they were walking on § 87(2)(b). PO Annunziata stated that § 87(2)(b) stopped moving in front of PO Borisenko while all of the other students continued to move on

§ 87(2)(b) PO Annunziata stated that it was not an “aggressive shove,” but more of a “guiding push” to get the student to move down the block.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In determining whether the use of force is reasonable, members of the service should consider: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; size, age, and condition of the subject in comparison to the MOS. Patrol Guide Procedure 221-01, “Force Guidelines” (Board Review 17).

When a member of the service must gain compliance, control, or custody of an uncooperative subject, the member should apply no more than the reasonable force necessary to gain control, Patrol Guide Procedure 221-02, “Use of Force” (Board Review 18).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g). According to the Patrol Guide, officers should use force to gain compliance, control, or custody of an uncooperative subject, or to ensure the safety of all parties present. § 87(2)(b), § 87(2)(g)

Additionally, the Patrol Guide instructs officers to utilize de-escalation tactics when appropriate to gain voluntary compliance. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g). Additionally, the Patrol Guide instructs officers to consider the size and age of the subject, and the nature of the crime. There was a significant age and size gap between PO Borisenko and the students. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation B – Discourtesy: Police Officer Peter Borisenko spoke discourteously to an individual.

It is undisputed that PO Borisenko stated, “Pick that shit up again,” to an individual.

At approximately 1:24 minutes in the original video, and in the SnagIt for Allegation B (Board Reviews 01,03, 05), a student in a blue jacket on the left can be seen picking up snow

It is undisputed that PO Borisenko asked the students, “Do you want to ride the lightning?”

At approximately 01:37 in the original video, and in the SnagIt for Allegation C (Board Reviews 01, 04, 05), PO Borisenko asks the students, “Do you want to ride the lightning?” When PO Borisenko asks the students this question, most of the students can be seen crossing § 87(2)(b) on the left side of the frame, all facing away from PO Borisenko. Two or three students were still on the sidewalk in front of PO Borisenko, all facing away from him, none with snow/ice in their hands.

§ 87(2)(b) (Board Review 13) stated that PO Borisenko and PO Annunziata followed him and his friends to the next corner, at East 26th Street. As § 87(2)(b) and his friends crossed the street, PO Borisenko asked him, “Do you want to ride the lightning bolt?” § 87(2)(b) asked PO Borisenko who he was talking to and PO Borisenko responded, “I’m talking to you.” § 87(2)(b) walked away and went home. When asked if PO Borisenko had anything in his hands when he made the statement, § 87(2)(b) said he thought that PO Borisenko pulled out his yellow taser.

§ 87(2)(b) (Board Review 12) stated that he asked PO Borisenko why he pushed him. Approximately one minute after pushing § 87(2)(b) PO Borisenko responded, “Oh, you tough? You want to ride the lightning?” § 87(2)(b) believed that PO Borisenko directed this statement at him. § 87(2)(b) and his friends walked away and PO Borisenko stated, “Yeah, keep walking.”

§ 87(2)(b) (Board Review 14) stated that, near the corner of East 26th Street and § 87(2)(b) the students started moving away from the officers across § 87(2)(b) from the south side to the north side. PO Borisenko said to the students, “Do you want to ride the lightning?” PO Borisenko was holding his taser at his side in his left hand and his baton at his side in his right hand when he said this. To § 87(2)(b) this could only mean that PO Borisenko was threatening to use the taser against the students. § 87(2)(b) did not think that there was a clear order to what PO Borisenko was saying and it was not clear what the students were supposed to do or were not supposed to do in order to avoid having the taser used against them.

PO Borisenko (Board Review 15) stated that, after saying, “Pick that shit up again,” he also asked, “Do you want to ride the lightning?” As noted above, the unidentified student who picked up the ice had dropped it before PO Borisenko stated “Pick that shit up again,” and “Do you want to ride the lightning.” PO Borisenko explained that, by asking if they wanted to “ride the lightning,” he meant that he was going to use his taser if they threw ice at him. When asked if the statement was directed at the student who had picked up the ice or the students as a group, PO Borisenko stated that it was directed at that one student, but that he wanted all of the students to hear it. When asked what he was trying to accomplish by making the statement, PO Borisenko stated that he wanted the students to get off the block. PO Borisenko did not want to use any force, but the students’ threat of force was causing him to potentially escalate his use of force. PO Borisenko wanted the students to know that he would retaliate if they threw something at him. PO Borisenko stated that he was making sure all the students heard him so that they would not throw anything at him and PO Annunziata. When asked if there were any additional reasons he asked the students if they wanted to “ride the lightning,” PO Borisenko stated, “No, just the fear for my safety and my partner’s safety.” PO Annunziata was right next to PO Borisenko when he made the statement. PO Borisenko did not remember where the student who picked up the ice was when he made the statement, but believed that the student was walking away when he said it. PO Borisenko did not remember if any of the students were facing him when he asked if they wanted

to “ride the lightning.” No other students picked up ice to PO Borisenko’s knowledge. When asked what the origin of the statement was, PO Borisenko stated that there was a Metallica album called “Ride the Lightning,” and that it was used in a movie or two.

PO Annunziata (Board Review 16) stated that PO Borisenko asked the student who picked up the ice, “Do you want to ride the lightning?” before the student dropped the ice.

The album cover for “Ride the Lightning” by Metallica (Board Review 21) depicts an electric chair being struck by lightning.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In determining whether the use of force is reasonable, members of the service should consider: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; size, age, and condition of the subject in comparison to the MOS. Patrol Guide Procedure 221-01, “Force Guidelines” (Board Review 17).

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§ 87(2)(g)

[REDACTED]

Additionally, the Patrol Guide instructs officers to consider the circumstances when deciding whether or not to use force. § 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date